



CITY OF MOLALLA

REQUEST FOR PROPOSAL

PROFESSIONAL ENGINEERING SERVICES

RFP FOR PROJECT NO. PW-18-02

SUBMITTAL DEADLINE: 12:00 P.M., June 20, 2018



**CITY OF MOLALLA REQUEST FOR PROPOSAL
ON-CALL PROFESSIONAL ENGINEERING SERVICES**

RFP FOR PROJECT NO. PW-18-02

The City of Molalla is requesting proposals from qualified firms to provide PROFESSIONAL ENGINEERING SERVICES for the City of Molalla for various City of Molalla initiated infrastructure projects including other related professional services. A copy of the Request for Proposal (RFP) packet may be obtained from the Public Works Director's, at City Hall, 117 N. Molalla Ave., Molalla, OR 97038, by calling 503-829-6855 or by downloading from the City's website at www.cityofmolalla.com.

All proposals must be sealed, clearly marked ON-CALL PROFESSIONAL ENGINEERING SERVICES Proposal - RFP for Project No. PW-18-02, **12:00 p.m., June 20, 2018** and received in the Public Works Director's Office at Molalla City Hall by the above specified date and time. Any proposal received after that date and time, or not submitted in the proper manner, will be returned without further consideration.

The City reserves the right to reject any or all proposals received as a result of this RFP, to waive any irregularities and to accept the proposal deemed to be in the best interest of the City. Preparation and submission of a proposal is at the Proposer(s)'s sole risk and expense.

Published May 30, 2018

**CITY OF MOLALLA REQUEST FOR PROPOSAL
ON-CALL PROFESSIONAL ENGINEERING SERVICES**

RFP FOR PROJECT NO. PW-18-02

1. GENERAL INFORMATION.

The City of Molalla (City) is soliciting proposals for On-Call Professional Engineering Services to provide design and construction services. Services include, but not limited to the tasks listed in Section 6.2. Services may also include supervising/inspecting work produced by the City. Work shall be provided to the City on an as-needed basis, as authorized by task order through the City Public Works Director or the City Public Works Director’s designee. During the term of the contract, the firm providing On-Call Professional Engineering Services represents the City of Molalla interests. To avoid a conflict of interest, the Consultant will be prohibited from providing similar engineering services to private development clients and property owners within the corporate limits and urban growth boundary of the City of Molalla.

2. BACKGROUND.

The City of Molalla, population 9,610, is located at the south end of Clackamas County, approximately 15 miles south of Oregon City. The City Council consists of a Mayor and six (6) Council members. The City operates under a City Manager form of Government.

The City owns and operates a number of public facilities including the following:

- ❖ Water Treatment Plant
- ❖ Water Distribution System
- ❖ Wastewater Treatment Plant
- ❖ Wastewater Collection System, including Five (5) Lift Stations
- ❖ Storm Water System
- ❖ Transportation System
- ❖ Parks System
- ❖ And other City infrastructure and facilities

3. ANTICIPATED SCHEDULE OF EVENTS.

RFP Advertised	May 25, 2018
Proposal Due Date	June 20, 2018
Selection Committee Evaluation	June 21-26, 2018
Interviews (if Needed)	June 27-July 03, 2018
Contract Approval	July 25, 2018

4. ANTICIPATED SCHEDULE OF EVENTS.

- ❖ Provide capital project design and construction under direction of Public Works Director and City Manager
- ❖ Provide infrastructure impact analysis as needed
- ❖ Provide scoping, design, construction specifications and as-builts services for successful bidding and construction for both new construction and/or maintenance
- ❖ Assist the City in consultation and coordination with State and Federal agencies
- ❖ Perform engineering services for or assist with; public improvements, urban renewal, traffic management, utilities, survey, environmental, geotechnical, management, right-of-way, landscape design, drainage, water treatment facilities, wastewater facilities with facultative lagoons, recycled water reuse, and biosolids management
- ❖ Assist with annual budget estimates and capital improvement planning as needed.
- ❖ Review development proposals or traffic impact analysis studies as needed
- ❖ Review and formulate updates to City master plans, facility plans and feasibility studies, as needed.
- ❖ Perform additional engineering functions and special projects as requested by City.

5. PROPOSAL INSTRUCTIONS.

A. PROPOSAL SUBMITTAL AND DUE DATE

Proposer(s) shall provide three (3) hard copies of the proposal in a sealed envelope clearly marked: "ON-CALL PROFESSIONAL ENGINEERING SERVICES Proposal - RFP for Project No. PW-18-02". Proposals shall be **submitted by 12:00p.m. on June 20, 2018** to:

Via Mail

Gerald Fisher, PE, Public Works Director
City of Molalla
P.O. Box 248
Molalla, Oregon 97038

Hand Delivery

Gerald Fisher, PE, Public Works Director
City of Molalla
117 N. Molalla Avenue
Molalla, Oregon 97038

Proposals shall be organized as specified below. The City of Molalla assumes no responsibility for delayed or undelivered mail or express packages. Proposals which are not delivered by the above specified time will not be considered. Faxed or electronically transmitted proposals will be rejected as non-responsive.

B. INQUIRIES

Questions concerning this RFP should be submitted in writing or e-mail to:

Gerald Fisher, PE, Public Works Director
City of City of Molalla
P.O. Box 248
Molalla, OR 97038

gfisher@cityofmolalla.com

Questions regarding specific technical aspects of the service requested by this RFP or seeking clarification concerning this RFP may be directed to the Public Works Director by emailing or calling 503-829-6855. No oral clarification will be binding on the City. The City will be bound only by this RFP and any written addendum issued hereunder.

If inquiries, comments or requests for changes raise issues that require clarification or a modification to this RFP, the clarification or modification will be made by written addendum.

- 6. CONTENT OF PROPOSALS.** Proposals should demonstrate that the Proposer(s) can furnish the services in a manner that will be cost effective for the City. Those proposals which do not contain all information required by this RFP or are otherwise non-responsive may be rejected immediately; however, the City has discretion to accept a proposal that does not conform with all RFP requirements if the City determines that the non-conformance is not substantial or material. If a proposal is unclear, or appears inadequate, at the City's discretion, the Proposer(s) may be given an opportunity to explain how the proposal complies with the RFP. The City also has discretion to permit a Proposer(s) to correct a typographical error or other minor mistake or oversight in its proposal.

Proposals must contain at least the following:

- 6.1. Proposal Form. The proposal form, attached hereto as RFP Exhibit "A" must be fully completed, submitted and duly executed by the authorized representative of the Proposer(s), and include the following:
- i. The Proposer(s)'s business name, address, telephone number, e-mail address and federal tax identification number;
 - ii. The Proposer(s)'s legal form of entity (sole proprietor, corporation, LLC, etc.) and, if applicable, state of incorporation or organization and main office address;
 - iii. Name(s) and title(s) of person(s) authorized to submit the proposal and to execute the contract.
- 6.2. Preferred Qualifications. The Proposer(s)'s statement of qualifications must contain the following:
- i. A description of the key personnel that will perform the services and their qualifications;
 - ii. Any knowledge, skills and abilities the Proposer(s) has in providing the services required by this RFP to the City or other public entities including, but not limited to:
 - ❖ Civil and Transportation Engineering
 - ❖ Water system treatment and distribution systems
 - ❖ Water right acquisition and maintenance
 - ❖ Wastewater system treatment and distribution
 - ❖ Wastewater lagoon, effluent, recycled water re-use and biosolids management

- ❖ Oregon DEQ and Oregon Department of Health experience
- ❖ Municipal transportation systems and coordination with State and County
- ❖ Municipality Standard Specification and Drawing development
- ❖ Street maintenance technique and pavement management
- ❖ General land use and infrastructure planning experience
- ❖ Oregon public contract management and bidding process
- ❖ Utility fee studies
- ❖ Public infrastructure financing
- ❖ Environmental and Wetland Guidance
- ❖ Real Estate Services
- ❖ Survey and Right-of-way
- ❖ Geotechnical support

- iii. Work load capacity
- iv. Availability of support staff

6.3. References. Proposals must contain a list of all private and public entities for which the Proposer(s) has provided similar services within the past two years and the name and phone number of a person within each entity who is knowledgeable of the Proposer(s)'s performance record.

7. PROPOSAL EVALUATION.

A. MINIMUM QUALIFICATIONS

The City will review proposals received to determine whether each Proposer(s) meets the following minimum qualifications:

- ❖ A Civil Engineer license to work in the State of Oregon, and other required licensures to provide the Scope of Services listed in Section 4 with the ability to provide Professional Licensure No. and/or proof of certifications necessary to meet these.
- ❖ Ability to provide the engineering work needed by the City to the standards and codes required by the City, County and State.
- ❖ Has the financial resources and bonding capability (if needed) for the performance of the desired engineer services, or the ability to obtain such resources.
- ❖ Ability to be licensed and registered to do business in the City of Molalla. City of Molalla Business License may be purchased after contract award.
- ❖ Ability to meet minimum insurance requirements identified by the City of Molalla within the standard City contract (Exhibit B).
- ❖ An Equal Opportunity Employer and otherwise qualified by law to enter into the attached Engineering Service Contract.
- ❖ Proposer(s) shall not be disqualified by the City, the Department of Administrative
- ❖ Services or the State Contractor's Board from working on public contracts.

B. EVALUATION CRITERIA

Proposals meeting the above minimum qualifications will be evaluated by the City using the following criteria:

	Maximum Points
1. Specialized experience in the type of work to be performed, specifically including work in a city of similar size.	(25)
2. Qualifications, knowledge, skills and abilities of the staff assigned by Proposer(s) to perform these services.	(20)
3. Past experience of Proposer(s) and project team members with relevant county, state, and federal regulatory and funding agencies.	(10)
4. Quality of proposed scope of work, including the proposed management techniques and practices for City service needs.	(10)
5. Familiarity with the City and City locale.	(15)
6. Availability and capability to perform the engineering services described in this RFP on an ongoing basis.	(20)
Maximum Total Points	200

EXHIBIT "A"
RFP FOR PROJECT NO. PW-18-02

PROPOSAL FORM

Legal Business Name: _____

Form and State of Organization: _____

Registered dba, if any: _____

Main Office Address: _____

Telephone Number: _____

E-mail address: _____

Tax Identification Number: _____

Representation, Covenant and Warranty of Undersigned and Proposer(s)

By signing this proposal, the undersigned makes the following representations and warranties:

1. That it is the duly authorized representative of the Proposer(s) for all purposes relative to the submission of this proposal.
2. That this proposal constitutes the Proposer(s)'s offer to enter into a contract with the City and, if accepted by the City, will be binding and enforceable against the Proposer(s)

By causing this proposal to be executed by the undersigned and delivered to the City, the Proposer(s) makes the following representations and warranties:

3. Proposer(s) has read and understands the terms and conditions contained in the RFP, had the opportunity to protest any term or condition that it found unacceptable and to seek clarification of any term or condition that it does not understand, and accepts and agrees to be bound by the terms and conditions of the RFP, including, but not limited to the contract conditions.
4. Proposer(s) has not discriminated against minority, women, disabled veterans or emerging small business enterprises in obtaining any required subcontracts.
5. Proposer(s) has not been listed by the Oregon Contractor's Board or the Oregon Department of Administrative Services as a person disqualified or ineligible to bid on or perform work under public contracts.
6. Proposer(s) agrees to meet all requirements contained in the RFP if it is selected to provide the services requested by this RFP.

Qualifications: In addition to the information requested by this RFP, the Proposer(s) should describe its capability to perform the services required under this RFP, and its recent, current and projected workloads.

Project Approach: Proposer(s) should submit a project management approach to deliver the final scope, schedule, preliminary engineering, design and construction. Describe any subcontractors that Proposer(s) would use as consultants, such as surveyors, landscape architects, etc. and how the subcontractors would be used. Describe any special resources available to the Proposer(s) that will be implemented to efficiently deliver a project limiting redesign, change orders, constructability challenges, and errors or omissions.

Authorized Signature: _____

Print Name and Title: _____

Date of Signature: _____

EXHIBIT "B"
RFP FOR PROJECT NO. PW-18-02
City of Molalla
Agreement for Professional Engineering Services

THIS AGREEMENT is made and entered into this _____ day of _____, 2018, by and between the City of Molalla, an Oregon municipal corporation, hereinafter referred to as "City", and _____, an Oregon corporation, hereinafter referred to as "Contractor".

RECITALS:

- A. City desires to obtain assistance in On-call Professional Engineering Services for select City projects, hereinafter referred to as "Services".
- B. Contractor has employees who are qualified by education and experience to provide said services and desires to provide said services.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

1. EFFECTIVE DATE

This Agreement is effective _____, 2018, and will continue thereafter until Services are complete or unless otherwise terminated consistent with the terms of this Agreement.

2. SCOPE OF WORK

Contractor will provide On-call Professional Engineering Services ("Services") specifically described in the RFP for Project No. PW-18-02 including RFP Proposal attached hereto and incorporated herein and as better defined in the corresponding attached documents.

3. CITY'S RESPONSIBILITIES

City shall:

- a. Provide criteria and information as to City's requirements and designate a person with authority to act on City's behalf on all matters concerning the Services;
- b. Furnish to Contractor existing studies, reports, summaries of system deficiencies and other available data and services pertinent to the Services; and Contractor shall be entitled to rely upon all such information in performing said Services;
- c. Arrange for access to and make all provisions for Contractor to enter upon public and private property as required for Contractor to perform the Services.

4. COMPENSATION

City agrees to pay Contractor for Services rendered as identified within Scope of Work (Section 2), including reasonable costs and expenses incurred by Contractor directly related to the Services in an amount identified within a Task order or in accordance with an attached Fee schedule provided by Contractor. Contractor will issue to City an itemized bill monthly, separate from any other billing, based upon a percent complete of the Lump Sum Amount, for compensation for Services performed during the previous month. City agrees to pay undisputed bills within thirty (30) days following date of receipt by City ("Due Date"). Any undisputed amounts not paid by the Due Date shall be subject to a late payment fee of twelve percent per annum until fully paid.

5. USE OF CITY'S NAME

Contractor shall be authorized to utilize the City's name and description of services rendered for the purposes of marketing Contractor's services, unless otherwise expressed in writing by City.

6. STATUS AS AN INDEPENDENT CONTRACTOR

Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation identified in Section 3 (City Responsibilities) of this Contract. As an independent contractor, Contractor is not eligible to receive through the City worker's compensation, social security, public employee's retirement, health insurance or other benefits provided to City employees. Contractor hereby expressly acknowledges and agrees that as an independent contractor, Contractor is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Contractor shall not affect his independent ability (or the ability of his insurer) to assert the monetary limitations found at ORS 30.270, the immunities listed at ORS 30.265, or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

7. PROJECT MANAGERS/NOTICES

City's Project Manager is the City Manager or in the event the City Manager is unavailable the Public Works Director. Each Party shall give the other written notification of any change in their respective Project Manager.

All notices required to be given under this Agreement, and all other communications related to this Agreement, shall be in writing and shall be deemed to have been duly given (a) when personally delivered, (b) when deposited for overnight mail, or (c) when received if deposited in first class U.S. Mail, charges prepaid, return receipt requested.

Notices shall be addressed as follows:

To CITY:
Gerald Fisher, PE, Public Works Director
City of Molalla
P.O. Box 248
Molalla, OR 97038

The City may change such address or change said designation or title of the individuals by written notice issued and delivered as above.

8. COMPLIANCE WITH APPLICABLE LAWS:

Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the provision of services under this Agreement. Without limiting the generality of the foregoing, to the extent applicable, Contractor expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No. 101-336) and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

9. DUTY TO INFORM

Contractor shall give prompt written notice to City if, at any time during the performance of this Agreement, Contractor becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Agreement, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Contractor shall constitute neither agreement with nor acquiescence in Contractor's statement or claim and shall not constitute a waiver of any of City's rights.

10. CONFIDENTIALITY AND NON-DISCLOSURE

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to City and/or confidential as defined under state and federal law. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Agreement shall be deemed to be confidential information. Any reports or other documents or items that result from the use of the confidential information by Contractor shall be treated with respect to confidentiality in the same manner as the confidential information. Confidential information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is furnished by City to others without restrictions similar to those imposed by this contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this contract; or (d) is independently developed by employees or agents of the Contractor who can be shown to have had no access to the confidential information.

Contractor agrees to hold confidential information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose confidential information to third parties or use confidential information for any purposes whatsoever other than the provision of services to City hereunder, and to advise each of its employees and agents of their obligations to keep confidential information confidential. Contractor shall use its best efforts to assist City in identifying and preventing any unauthorized use or disclosure of any confidential information. Without limitation of the foregoing, Contractor shall advise City immediately in the event Contractor learns or has reason to believe that any person who has had access to confidential information has violated or intends to violate the terms of this Agreement and contractor will at its expense cooperate with City in seeking injunctive or other equitable relief in the name of City or Contractor against any such person. Contractor agrees that, except as directed by City, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any confidential information to any person, and that upon termination of this Agreement or at City's request, Contractor will turn over to City all documents, papers, and other matter in Contractor's possession that embody confidential information

Contractor acknowledges that breach of this paragraph including disclosure of any confidential information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to the City that is inadequately compensable in damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the City and are reasonable in scope and content.

11. CONFLICT OF INTEREST

Contractor covenants that neither it nor its employees have any interest and shall not acquire any (direct or indirect) interest which would conflict in any manner with the performance of Services.

12. PAYMENTS REQUIRED By ORS 279B.220:

For all services provided under this Agreement, Contractor shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the industrial Accident Fund from the Contractor or any subcontractors; (iii) not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished; (iv) pay to the Department of Revenue all sums withheld from employees under ORS 316.167. The City will not withhold from such compensation or payments any amount(s) to cover the Contractor's federal or state tax obligation.

13. HOURS OF LABOR

Contractor shall pay employees for overtime work performed under the terms of this contract in accordance with ORS 653.010 to ORS 653.261 and the Fair Labor Standards Act of 1938. (29 USC §§201 *et. seq.*)

14. INDEMNITY AND INSURANCE

- A. Indemnity: Contractor's work will be performed consistent with the best professional practices and standards of licensed engineer performing similar projects in Oregon, as well as with the requirements of applicable federal, state and local laws. Contractor acknowledges responsibility for all liability arising out of the performance of this contract and will hold City harmless from and indemnify City against liability, settlements, loss, costs, and expenses in connection with any action, suit or claim resulting or allegedly resulting from Contractor's negligent acts or omissions, activities, or services in the course of performing this contract or for the negligent acts or omissions of their agents or employees.
- B. Liability Insurance: Contractor will maintain during the life of this Agreement and provide certification of the minimum public liability and property damage insurance, naming the City of Molalla as additional insured as applicable which shall protect the City and Consultant from claims for injuries including accidental death, as well as from claims for property damage, which may arise from the performance of work under this agreement:
 - i. Commercial General Liability – Including personal injury liability, blanket contractual liability and broad form property damage liability with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each occurrence for bodily injury and property damage and not less than \$2,000,000 (two million dollars) in the aggregate.
 - ii. Automobile Liability – a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each occurrence for bodily injury and property damage and not less than \$1,000,000 (one million dollars) in the aggregate.
 - iii. Professional Liability- With limits not less than \$1,000,000.
- C. Workers Compensation Coverage - Contractor is a subject employer that will comply with ORS 656.017. Contractor warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Contractor shall indemnify City for any liability incurred by City as a result of Contractor's breach of the warranty under this paragraph. (ORS 279B.230)

15. MEDICAL CARE FOR EMPLOYEES

Contractor shall make payment of all sums to any person, co-partnership, association or corporation,

furnishing medical, surgical and/or hospital care incident to the sickness or injury of Contractor's employee(s), all sums which Contractor agrees to pay for such services and all monies and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or contract for the purpose of providing or paying for such service. (ORS 279B.230)

16. SAFETY & HEALTH REQUIREMENTS

Services provided under this Agreement shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

17. CONTRACTOR IDENTIFICATION

Contractor shall furnish to City the Contractor's employer identification number, as designated by the Internal Revenue Service or, if the Internal Revenue Service has designated no employer identification number, Contractor's Social Security number.

18. AWARD TO FOREIGN CONTRACTOR

If the amount of this Agreement exceeds \$10,000 and if the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The City shall withhold final payment under this Agreement until Contractor has met this requirement.

19. TERMINATION

At any time with or without cause, City or Contractor has the right to terminate this contract. Contractor agrees to provide City with written notice of its intent to terminate this Agreement no less than ten (10) business days before termination. If City terminates this contract, it shall deliver full payment to contractor for services rendered to date of termination.

20. WORK IS PROPERTY OF CITY

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Contractor under this contract is the property of City.

21. INTELLECTUAL PROPERTY

The interest in any intellectual property, including, but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the City. Contractor shall execute any assignment or other documents necessary to effect this paragraph. Contractor shall transfer to the City any data or other tangible property generated by Contractor under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

22. PROJECT INFORMATION

Contractor agrees to share all information related to services covered in this Agreement with the City. No information, news, or press releases related to the project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of the City Manager.

23. PAYMENT OF CLAIMS BY THE CITY

Contractor shall make payment promptly, as due, to all persons supplying to Contractor labor or material for the prosecution of the work provided for in this contract. (ORS 279B.220) If Contractor fails, neglects, or refuses to make a prompt payment of any claim for labor or services furnished to Contractor or a subcontractor, or by any person in connection with this contract as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge

the amount of the payment against funds due or to become due to Contractor pursuant to this contract. The City's payment of a claim under this Paragraph shall not relieve Contractor or Contractor's surety, if any, from responsibility for those claims.

24. BREACH

Contractor shall remedy any breach of this Agreement within the shortest reasonable time after Contractor first has notice of the breach or City notifies Contractor thereof, whichever is earlier. If Contractor fails to remedy the breach, City may immediately terminate the Agreement, may obtain substitute services in a reasonable manner, and may recover from Contractor the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.

Pending a decision to terminate all or part of this Agreement, City unilaterally may order Contractor to suspend all or part of the services under this Agreement. If City terminates all or part of the Agreement pursuant to this paragraph, Contractor shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Agreement and later orders Contractor to resume those services, Contractor shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension. To recover amounts due under this paragraph, City may withhold from any amounts owed by City to Contractor, including but not limited to, amounts owed under this or any other Agreement between Contractor and City.

25. LAW OF OREGON

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the City and the Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor hereby consents to the in personam jurisdiction of said courts.

26. DISPUTES

Should any dispute arise between the parties to this Agreement, it is agreed that such dispute will be resolved, where possible, by the City Manager and Contractor. If the dispute cannot be resolved by the City Manager and Contractor, the dispute will be submitted to a mediator prior to any litigation and Contractor hereby expressly agrees that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. The City and Contractor shall exercise good faith efforts in selecting a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If either the City or Contractor requests mediation and the other fails to respond or if the parties fail to agree on a mediator within 10 days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section. Any litigation arising under or as a result of this Agreement shall be tried to the court without a jury. Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees.

27. SUCCESSORS AND ASSIGNMENTS

Each Party binds itself, and any partner, successor, executor, administrator, or assign to this Agreement. Neither City nor Contractor shall assign or transfer their interest or obligation hereunder

in this Agreement without the written consent of the others. Contractor must seek and obtain City's written consent before subcontracting any part of the work required of Contractor under this Agreement. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

28. RECORDS

Contractor will retain all books, documents, papers, and records that are directly pertinent to this Contract and any work done under its term for at least three years after City makes final payment on this Agreement and all other pending matters are closed.

Contractor will allow the City, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

29. FORCE MAJEURE

Neither the City, nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the Party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Agreement. The City may terminate this Contract upon written notice after reasonably determining that such delay or default will likely prevent successful performance of the Agreement.

30. MODIFICATION

Any modification of the provisions of this contract must be in writing and signed by the parties.

31. NO WAIVER OF LEGAL RIGHTS

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

32. SEVERABILITY

If any provision of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

33. MULTIPLE ORIGINALS; COUNTERPARTS

This Agreement may be executed in multiple original counterparts, each of which is deemed to be an original, and all such counterparts shall constitute one and the same instrument.

34. INTEGRATION

This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

IN WITNESS WHEREOF, City has caused this Contract to be executed in duplicate originals by its duly authorized undersigned agents and Contractor has executed this Contract on the date hereinabove first written.

CITY OF MOLALLA

By: _____
Dan Huff, City Manager

Dated: _____

Legal Authorized Signature, Company Name

By: _____

Dated: _____